# United States Department of Labor
# Employees' Compensation Appeals Board

| | | |
|---|---|---|
| **W.J., Appellant** | ) | |
| **and** | ) | **Docket No. 09-1641** |
| | ) | **Issued: August 13, 2010** |
| **U.S. POSTAL SERVICE, POST OFFICE, Little Rock, AR, Employer** | ) | |

*Appearances:*
*Sheila F. Campbell, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

## *JURISDICTION*

On June 19, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 7, 2008 merit decision denying his claim and a May 27, 2009 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.[1]

## *ISSUES*

The issues are: (1) whether appellant met his burden of proof to establish that his cervical condition is causally related to factors of his federal employment; (2) whether the Office properly denied his request for a subpoena; and (3) whether the Office properly refused to reopen his case for merit review under 5 U.S.C. § 8128(a).

## *FACTUAL HISTORY*

On October 9, 2007 appellant, then a 53-year-old rehabilitation passport clerk, filed an occupational disease claim for a neck condition due to continued and repeated stress of his work

[1] For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days. 20 C.F.R. § 501.3(e) (2008).

environment. He was first aware of his condition and its relationship to his job on March 9, 2007. Appellant indicated that his physician believed that his neck problem was an expansion of a previous condition. The employer advised that he worked intermittently as a rehabilitation clerk processing passport applications from August 21, 2006 to April 9, 2007, when he stopped work. The file reflects appellant has several accepted claims relating to a right shoulder condition for which he had arthroscopic surgery on August 18, 1993. He worked with restrictions on lifting and reaching above the shoulder.

Appellant claimed that he was required to work outside of his restrictions using both shoulders. He had to look up and down and from side to side while looking down to scratch bar codes, box mail, stamp scan mail, assist customers with applications, lift a camera, exchange information, pull express labels, staple and make copies. Appellant submitted, a July 10, 2006 rehabilitation position offer, which noted passport duties, signed by him on August 21, 2006. In a November 3, 2006 report, Dr. Harold B. Betton, a Board-certified family physician, noted that he did not have an opportunity to review appellant's current job offer prior to appellant accepting it. He advised that appellant's shoulder pain might be related to his work, particularly if he worked outside of the restrictions of the current job offer.

In an April 25, 2007 statement, Karen Collier, appellant's supervisor, delineated his passport job duties. She noted that he did not perform any task that required physical exertion such as lifting, pushing, pulling, bending or stooping and that other passport clerks were available for assistance. Appellant was relieved of the two button process of taking passport pictures and was given an electric stapler. He also scratched out bar codes and his workstation was at the same level as that in passports.

In an April 27, 2007 letter, Nancy Campbell, an injury compensation specialist, controverted the claim. She stated that appellant's current job did not involve stress on his right shoulder or strenuous activity. It consisted of processing about 18 passports a day. Appellant did not fill out the passport application for the customer but only reviewed the application for completeness. He filled out the customer's driver's license number, passport agent information and the transmittal log. Appellant processed an average of 12 passports a day within an eight-hour tour of duty between February 28 and April 6, 2007. Ms. Campbell noted that he was placed on total disability by his treating physician on April 9, 2007 under another claim.

In a November 23, 2007 letter, Nancy Carmichael, an injury compensation specialist, stated that there were no continued stress situations involving appellant's neck. She noted that a second opinion specialist had found appellant capable of returning to work without restrictions. Ms. Carmichael reiterated that appellant only reviewed passport applications for completeness and provided a copy of the application. She stated that his job did not require excessive writing and he was allowed to work at his own speed.

In an October 16, 2007 statement, Ms. Collier noted that appellant had been on limited duty since 1995 and was off work since April 6, 2007 under the other Office claim. She denied that he was forced to work outside his restrictions or that he was required to box mail. Ms. Collier submitted copies of appellant's box rings to support that he did not work in that section from December 26, 2006 to April 6, 2007. She stated that 5 to 10 percent of his duties consisted of processing passport applications, which did not require using either shoulder or

constantly looking up and down. Appellant was not the sole passport agent and did he perform such duties daily for eight hours. Ms. Collier submitted supporting statements from other passport agents. Appellant also greeted and assisted customers in finding appropriate forms. Ms. Collier concluded that his description of his job duties was inaccurate.

In an October 15, 2007 statement, Kelly Neal, sales and distribution clerk, advised that she processed about 10 to 20 percent of the passport applications, which involved reviewing the applications, taking passport pictures and accepting application fees. Appellant processed a portion of the applications but was not allowed to accept the processing fees as he was not authorized to handle cash. In an October 15, 2007 witness statement, In-Yol Moore, sales and distribution clerk, noted three full-time sales and distribution clerks and one clerk processed passport applications. Since January 2007, Ms. Neal processed about 50 percent of the passport applications, while the two other sales and distribution clerks processed about 40 percent of the applications. She estimated that appellant processed about 10 percent of the applications without accepting processing fees.

In a November 14, 2007 report, Dr. Bernard Crowell, an orthopedic surgeon to whom appellant was referred by Dr. Betton, noted that appellant reported a long history of chronic right shoulder pain that started with a 1992 job injury. Appellant had right shoulder surgery in 1995, but had continued pain and discomfort after being placed on restrictions. On February 6, 2007 appellant filed a claim for right shoulder problems and left shoulder pain with neck pain and pain radiating into his arms. A May 7, 2007 right shoulder magnetic resonance imaging (MRI) scan showed moderate rotator cuff tendinopathy and peritendinitis. Cervical spine x-rays showed normal disc spaces with ossification at C5-6 with decreased vertebral height with mild spurring. Dr. Crowell noted that this was probably from the old 1992 injury. A June 20, 2007 cervical spine MRI scan showed broad-based displacement with left foraminal position at C6, along with broad-based bulge and prominent biforaminal disc protrusion at C6-7 with abutment of the C7 root. Dr. Crowell stated that appellant had surgery on September 19, 2007. He noted that there was a possibility that appellant might have sustained a shoulder and cervical injury in the early 1990s. However, because of Dr. Crowell's overriding shoulder pain, the cervical symptomology and pathology may have been overlooked as it progressed over the years. He explained that this was why appellant never fully recovered and his symptoms progressed. Dr. Crowell stated at times it was possible for a herniated nucleus pulposus to progress to cervical spine degenerative disc disease with stenosis and be masked by shoulder pathology unless there was a high degree of suspicion or suboptimal results after shoulder surgery.

In a November 26, 2007 report, Dr. Betton noted treating appellant since the early 1990's. He stated that appellant's work as a postman, where he carried a shoulder bag for many years, was the nexus for the initial shoulder injury. Dr. Betton advised that surgery and physical therapy did not improve appellant's condition and he habitually complained of being worked outside of his restrictions. A cervical MRI scan showed disc disease and, after conservative treatment failed, appellant had surgery that improved the shoulder pain and resolved the neck pain. Dr. Betton opined that appellant's cervical spine and shoulder problems "antedate to the original injury." He stated that factors that cause shoulder injuries, such as lifting and carrying, frequently cause cervical spine discopathy. Appellant had no other problems that would have otherwise caused his neck complaints.

In a December 5, 2007 decision, the Office denied appellant's claim finding that the evidence did not establish the employment activities as alleged and there was insufficient medical evidence relating his cervical condition to the claimed events.

On January 2, 2008 appellant's attorney requested an oral hearing. She contended that the repetitive nature of appellant's job, which resulted in the accepted right shoulder claims, caused cervical disc disease.

In a February 6, 2008 letter, the Office acknowledged appellant's hearing request and advised him that if he wished to request a subpoena of witnesses or documents "you must file your request no later than 60 days from the date of your initial request for hearing." It noted that any subpoena request "should also clearly explain why the testimony or evidence is directly relevant to the issues to be addressed at the hearing and why the subpoena is the best and only method to obtain such evidence."

A telephonic hearing was held May 7, 2008. Appellant addressed his duties as a rehabilitation passport clerk and described repetitive nature of passport work and lifting/adjusting the camera. He stated that the electric stapler never worked and he used a manual stapler. Appellant pulled labels and did return sender mail. He had to turn to get express labels and scratching out bar codes and stamping mail were repetitive. Appellant worked overtime on passport and was not provided any help when he asked. He contended that he was the only person designated to do passports. Although there were passport clerks, they did not help until after he got hurt. Appellant estimated that he received 40 to 50 passport applications daily. He contended that Dr. Betton did not agree to the job and that his other occupational disease claim for repetitive activity was accepted on February 6, 2007.

After the hearing, appellant submitted a further description of the passport application process. He requested that subpoenas be issued for witnesses and for the production of books and videotapes regarding his duties. Appellant listed individuals he wanted to subpoena. He further stated that videotapes were made of him doing passport duties, when rules were changed requiring everyone leaving the country to have a passport.

In a May 7, 2008 witness statement, Howard Jackson, custodian, advised that appellant did passport work from the time he began his tour at 10:00 a.m. until about 5:00 or 5:30 p.m. He stated that appellant sometimes worked overtime and had no help. In a May 7, 2008 statement, Jewel Williams, window clerk, stated that she saw appellant doing passport duties.

Appellant submitted additional medical evidence from Dr. Betton and Dr. Crowell, who stated that appellant underwent an anterior cervical fusion at C5-6 and C6-7 on September 19, 2007. In a March 11, 2008 report, he reiterated that the cervical injury was overlooked due to the shoulder injury that masked the cervical pathology.

In a May 29, 2008 statement, Sharon Norman, a clerk, described passport processing duties and noted that she had processed 25 or more passports in a day. In a May 26, 2007 statement, Cynthia Lynn noted the steps involved in the passport process. She advised three clerks were trained in the passport process (Ms. Neal, Jenny Moore and herself) and they showed appellant the passport process when he was sent to their office.

By decision dated July 7, 2008, an Office hearing representative affirmed the December 5, 2007 decision. The hearing representative found that, while appellant processed passports, there was a discrepancy between his account of his duties and that provided by the employing establishment. She found that his allegations concerning his work actives were not credible as his testimony and varied written statements described his duties. The hearing representative also denied appellant's request for a subpoena as it was not requested until after the hearing and did not sufficiently explain why a subpoena was the best and only method to obtain such evidence.

Appellant requested reconsideration. In a July 26, 2008 letter, counsel argued that appellant's job consisted of repetitive activities since he received his first modified job and, prior to his passport job, he had duties involving casing, lifting and boxing mail as well as working with certified mail, store stock, completing forms and other duties as directed. In his current job, appellant worked at least seven hours processing passports and one hour casing mail in the box section. Counsel stated that there was a surge in passport applications due to a change in the law that was noted in a newspaper articles that she attached. Appellant was not given additional assistance to perform these activities and worked 9:00 a.m. to 7:00 p.m. processing passport applications. Counsel advised that his claim was for an aggravation or worsening of a preexisting condition. She contended that appellant's cervical condition related back to the 1992 injury and had been masked by the shoulder pathology. Appellant submitted: an October 22, 2007 letter commemorating his 35 years of service; a motion to enforce settlement of an Equal Employment Opportunity claim; newspaper articles concerning passport regulations; medical records from Dr. Betton and Dr. Crowell; and a June 20, 2007 report from Dr. Thomas P. Rooney, a Board-certified orthopedist.[2]

In a May 27, 2009 decision, the Office denied appellant's reconsideration request on the grounds the evidence submitted was insufficient to warrant merit review of his claim.

## ***LEGAL PRECEDENT -- ISSUE 1***

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

[2] Dr. Rooney noted appellant's history and examination findings. He did not address appellant's passport duties relative to the October 9, 2007 occupational diseased claim.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton, id.*

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[6] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[7] and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[8]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant[10] and must be one of reasonable medical certainty[11] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

## ***ANALYSIS -- ISSUE 1***

It is not disputed that during the period August 21, 2006 to April 9, 2007 appellant worked as a clerk processing passport applications, without accepting application fees and performed other duties such as greeting and assisting customers in finding forms, scratching bar codes and stamping scanned mail. The evidence reflects that appellant processed about 10 percent of the passport applications received. Consequently, the evidence from employing establishment management and clerks, supports that appellant performed passport processing.

The evidence does not substantiate appellant's assertions that he processed 40 to 50 passport applications for eight hours a day without help or that he worked overtime on such duties that involved significant repetitive activity.[13] While appellant submitted statements from Mr. Jackson, Ms. Norman and Ms. Williams who noted seeing appellant perform passport duties,

[6] *Solomon Polen*, 51 ECAB 341 (2000).

[7] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[8] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[9] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[11] *John W. Montoya*, 54 ECAB 306 (2003).

[12] *Judy C. Rogers*, 54 ECAB 693 (2003).

[13] *See H.G.*, 59 ECAB ___ (Docket No. 07-2397, issued June 11, 2008) (an employee's statements must be consistent with the surrounding facts and circumstances as well as the employee's subsequent course of action; an employee has not met his burden of proof where there are inconsistencies in the record that cast serious doubt on the validity of the claim).

these statements are not specific as to when he was observed or the nature or extent of the duties. The employing establishment provided statements from individuals supporting that from February 28 to April 6, 2007, appellant averaged processing about 12 passports a day and processed about 10 percent of the applications. Appellant has not presented sufficient evidence to support his assertions of performing more strenuous and repetitive duties for eight or more hours daily. The hearing representative considered this evidence and appellant's testimony and did not find his testimony credible that his work activities were repetitive or outside of his restrictions. She noted that appellant's testimony and written evidence described a variety of actions that did not seem strenuous, repetitive, or outside of his work restrictions. The Board finds that the hearing representative properly weighed the circumstances of the case and exercised sound discretion and logic in drawing conclusions based on the factual information in the claim.[14] The weight of the evidence fails to substantiate appellant's assertions pertaining to the extent and duration of his work activities.

Appellant also has not submitted sufficient medical evidence to establish that his passport or other work activities caused or aggravated his claimed neck condition. He alleged that Dr. Betton did not approve of his rehabilitation passport clerk position and referenced the physician's November 3, 2006 report. However, this medical report is not directly relevant to the October 9, 2009 occupational disease claim in which appellant indicated that he first became aware of his condition and its relation to his employment in March 2007. The issue before the Board does to pertain to the propriety of job offers that may have been made in other claims.[15] Dr. Betton's November 3, 2006 report predates the period at issue in this claim and does not address how processing an average of 12 passport applications a day caused or aggravated the claimed neck condition.

The reports from Dr. Crowell and Dr. Betton provide, at best, speculative opinions that appellant's cervical spine problems are work related or relate to the injury in another claim not presently before the Board. In a November 14, 2007 report, Dr. Crowell speculated that it was possible appellant may have sustained both a shoulder and cervical injury in the early 1990s but that the cervical symptomology may have been overlooked due to appellant's shoulder condition. This report does not clearly address how performing passport duties, of as noted, in 2006 and 2007 caused or aggravated the claimed neck condition. To the extent, Dr. Crowell supports causal relationship, he does not demonstrate a familiarity with an accurate factual background regarding the present claim and he couched his opinion in speculative terms. Thus, his opinion is of limited probative value.[16] In a November 26, 2007 report, Dr. Betton explained that factors that cause shoulder injuries, such as lifting and carrying, frequently cause spine discopathy. However, he did not provide any medical explanation as to whether there was any medical connection between the accepted work duties and appellant's cervical condition. Dr. Betton did not discuss the evidence of record. He did not address how the lifting performed by appellant

[14] *Sharon J. McIntosh*, 47 ECAB 754, 757 (1996) (the Board may rely on the discretion of the hearing representative in making credibility determinations when clearly explained and based on the weight of evidence).

[15] To the extent appellant contends that he has a consequential injury arising out of an injury in another claim, it is not issue in this claim.

[16] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

caused the claimed condition. No other medical reports explain how appellant's passport duties or other established work duties either caused or aggravated the claimed neck condition.

The Board finds that appellant did not submit sufficient medical evidence based on an accurate factual background establishing that his accepted work duties caused or aggravated the claimed neck condition. Appellant did not meet his burden of proof.

On appeal, appellant's attorney contends that the medical evidence of record supports that the original injury appellant sustained in 1992 was sufficient to cause a shoulder injury and a neck injury and that the shoulder pathology masked the neck condition. These arguments do not pertain to the occupational claim that is before the Board concerning appellant's work during 2006 and 2007.[17]

## ***LEGAL PRECEDENT -- ISSUE 2***

Section 8126 provides that the Secretary of Labor, on any matter within her jurisdiction, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles. Office regulations provide that a claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative, who may issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means and for witnesses only where oral testimony is the best way to ascertain the facts.[18]

In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could have been obtained.[19] Section 10.619(a)(1) of the implementing regulations provide that a claimant may request a subpoena only as a part of the hearing process and no subpoena will be issued under any other part of the claims process. To request a subpoena, the requestor must submit the request in writing and send it to the hearing representative as early as possible, but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.[20]

The Office hearing representative retains discretion on whether to issue a subpoena. The function of the Board on appeal is to determine whether there has been an abuse of discretion. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable

[17] *See supra* note 15.

[18] 5 U.S.C. § 8126; 20 C.F.R. § 10.619; *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008).

[19] *L.W.*, 59 ECAB ___ (Docket No. 07-1346, issued April 23, 2008).

[20] 20 C.F.R. § 10.619(a)(1); *G.T., supra* note 18.

exercise of judgment or actions taken which are clearly contrary to logic and probable deduction from established facts.[21]

## ***ANALYSIS -- ISSUE 2***

On January 2, 2008 appellant requested an oral hearing which was held on May 7, 2008. On February 6, 2008 the Office advised appellant that a subpoena request must be made within 60 days after the date of the hearing request. On June 3, 2008 it received appellant's request for subpoenas of witnesses and evidence. In a July 7, 2008 decision, an Office hearing representative denied appellant's request to subpoena the requested witnesses and documents. She found appellant's subpoena request was over 60 days from the date of his January 2, 2008 initial request for a hearing. The hearing representative also noted that appellant provided two written statements from two of the witnesses he requested to be subpoenaed and that the record also contained a witness statement from Ms. Neal. The hearing representative found that appellant offered no explanation as to why a subpoena would be the best and only method to obtain the evidence he requested.

The Board finds that the hearing representative properly denied appellant's subpoena request as the request was clearly untimely since it was not made until after the hearing was held and more than 60 days after the January 2, 2008 hearing request. Additionally, appellant did not establish why a subpoena was the best method to obtain the evidence or testimony in question.

The Board finds that the hearing representative did not abuse her discretion in denying appellant's request for a subpoena.

## ***LEGAL PRECEDENT -- ISSUE 3***

To require the Office to reopen a case for merit review under section 8128(a) of Act,[22] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[23] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[24] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[25]

---

[21] *L.W.*, *supra* note 19.

[22] *See supra* note 3. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[23] 20 C.F.R. § 10.606(b)(2).

[24] *Id.* at § 10.607(a).

[25] *Id.* at § 10.608(b).

## ***ANALYSIS -- ISSUE 3***

Appellant's reconsideration request neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Appellant's attorney argued that the reconsideration request was premised on the fact that appellant had engaged in repetitive activities since he received his first modified job following his shoulder injury and the medical evidence supported that appellant's neck condition dated back to his original shoulder injury in 1992. This argument, however, was previously considered by the Office.[26] Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also did not submit relevant and pertinent new evidence not previously considered by the Office. While appellant's attorney argued the denial of appellant's claim is contrary to the medical evidence, the new medical reports received from Drs. Betton, Rooney, and Crowell, did not specifically address the relevant medical issue of whether accepted work duties caused the claimed cervical condition. Appellant also submitted physical therapy notes. However, these are not relevant with regard to the underlying medical issue as a physical therapist is not competent to render medical opinion.[27] The other evidence appellant submitted, such as newspaper articles, letters of commemoration and motions do not address the relevant factual matters regarding the nature and frequency of appellant's duties. Consequently, appellant is not entitled to a merit review based on the third criterion, noted above.

As appellant did not satisfy any of the above-mentioned criteria, the Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim.

## ***CONCLUSION***

The Board finds that appellant did not establish that he sustain a cervical condition causally related to factors of his federal employment in 2006 and 2007. The Board finds that the hearing representative properly denied his subpoena request. The Board also finds that the Office properly refused to reopen appellant's case for further review of the merits under 5 U.S.C. § 8128(a).

[26] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case. *C.N.*, 60 ECAB ___ (Docket No. 08-1569, issued December 9, 2008).

[27] *See A.C.*, 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008). *See also* 5 U.S.C. § 8101(2).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs decisions dated May 27, 2009 and July 7, 2008 are affirmed.

Issued: August 13, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board